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ALEXANDER L. STEVAS,
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No. 82-1724

In The
Supreme Court of the United States
OCTOBER TERM, 1983

STATE OF NEW YORK,

Petitioner,

vs.

ROBERT UPLINGER and SUSAN BUTLER,

Respondents.

**ON WRIT OF CERTIORARI TO THE
NEW YORK STATE COURT OF APPEALS**

**PETITIONER'S OBJECTION TO MOTION OF
THE AMERICAN ASSOCIATION FOR PERSONAL
PRIVACY, THE SEX INFORMATION AND
EDUCATION COUNCIL OF THE UNITED STATES
(SIECUS), THE COALITION ON SEXUALITY
AND DISABILITY, AND THE SOCIETY FOR
THE SCIENTIFIC STUDY OF SEX TO FILE
BRIEF AMICI CURIAE**

RICHARD J. ARCARA
District Attorney, Erie County
Counsel of Record
for Petitioner
200 Erie County Hall
25 Delaware Avenue
Buffalo, New York 14202
(716) 855-2424

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Petitioner State of New York hereby respectfully files its objection, pursuant to Supreme Court Rule 36.3, to the motion made by the American Association for Personal Privacy, the Sex Information and Education Council of the United States (SIECUS), the Coalition on Sexuality and Disability, and the Society for the Scientific Study of Sex for leave to file a brief *amici curiae*. The motion and brief *amici curiae* were received by petitioner on December 20, 1983. Consent to file a brief as *amici curiae* had been requested of petitioner but refused on the

ground that *amici* had no concrete, substantial interest in the decision of the case.

Petitioner respectfully requests that the Court deny the motion for leave to file the brief *amici curiae* because the American Association for Personal Privacy, the Sex Information and Education Council of the United States (SIECUS), the Coalition on Sexuality and Disability, and the Society for the Scientific Study of Sex have no legitimate interest in the instant case as demonstrated by the content of their proposed brief *amici curiae*. This brief concentrates almost exclusively on whether the State may outlaw homosexuality *per se*, with abundant scientific and medical authorities in support thereof.

Clearly, "the justifiability of the ruling of the New York Court of Appeals in *People v. Onofre*, 51 NY2d 476 (1980), *cert. denied*, 451 US 987 (1981), that decisions by adults to engage in private consensual sexual activity are protected by the constitutional right to privacy" (Brief of *Amici Curiae* at 2) is not the issue before this Court as framed in petitioner's brief. Petitioner is not asking this Court to review the correctness of the Court of Appeals decision in *Onofre*, *supra*, decriminalizing private, non-commercial consensual sodomy. However, as a review of the proffered *amici curiae* brief demonstrates, the entire argument of *amici curiae* centers upon the consensual sodomy issue rather than what this Court has, in fact, been called upon to decide, to wit, the constitutionality of New York Penal Law §240.35(3).

For all the foregoing reasons, petitioner respectfully requests this Court to deny the motion of the American Association for Personal Privacy, the Sex Information and Education Council of the United States (SIECUS), the Coalition on Sexuality and Disability, and the Society for the Scientific Study of Sex for leave to file a brief *amici curiae*.

Respectfully submitted,

RICHARD J. ARCARA
Counsel for Petitioner
200 Erie County Hall
25 Delaware Avenue
Buffalo, New York 14202
(716) 855-2424